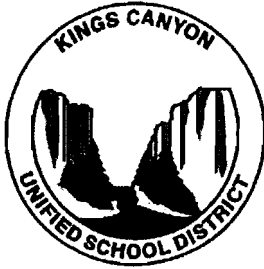


Received & Inspected
MAR 25 2011
FCC Mail Room



Kings Canyon Unified School District
675 W. Manning Avenue
Reedley, CA 93654
(559) 305-7024

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of)	
)	
Request for Review by)	
)	
Kings Canyon Unified School District)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-06
Support Mechanism)	
)	

REQUEST FOR REVIEW

Funding year 2005¹ (7/1/2005 to 6/30/2006)
Form 471 Application No.: 482378
Funding Request No.: 1335796

Funding Year 2006 (7/1/2006 to 6/30/2007)
Form 471 Application No.: 537076
Funding Request No.: 1486420

Funding Year 2007 (7/1/2007 to 6/20/2008)
Form 471 Application No.: 586166

¹ There are three Forms 471, from three funding years (Funding Year 2005, Funding Year 2006 and Funding Year 2007) that are the subject of this Request for Review. All three Forms 471 contain Funding Request Numbers (FRNs) listing Trillion Partners, Inc. as the service provider; the FRNs that are the subject of this Request for Review were all rescinded for the same reason. Therefore, the applicant respectfully requests that all three appeals be combined in this one Request for Review.

No. of Copies rec'd 0
List A B C D E

Funding Request No.: 1626423

Billed Entity Name: Kings Canyon Unified School District

Billed Entity No.: 144054

Billed Entity FCC Registration No.: 0006743595

I. Introduction and Background

Kings Canyon Unified School District ("KCUSD") respectfully requests a review of the Notification of Commitment Adjustment (COMAD) Letters issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company, dated February 9, 2011 rescinding the funding requests on the three Form 471 applications cited above, filed for Funding Years 2005, 2006 and 2007 respectively, by KCUSD. In each case the reason for rescission was:

"After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, documentation provided by you and/or your vendor indicated that there was not a fair and open competitive bid process free from conflicts of interest. The documents provided by you and/or your service provider indicated that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, which resulted in a competitive process that was no longer fair and open. Therefore, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant and service provider."

The subject of these rescissions is wireless wide-area network (WAN) services which were obtained under a five year contract Kings Canyon Unified School District awarded to Trillion Partners, Inc. originally in February 2005. That contract was amended and restated in 2007, for a five year period.

Given the totality of circumstances surrounding the competitive bidding which resulted in the underlying contract (and its subsequent amendment) which was the basis for the cited funding requests, we believe that SLD erred in determining the payment of

certain conference-related and other meal expenses paid by Trillion Partners, Inc. constituted a *per se* violation of the requirement for a "fair and open" competitive bidding process, without any consideration of the timing, circumstances or amount of the expenses. In fact, SLD has failed to provide any explanation or to show there is any link between the expenses in question and any "conflict of interest" or other problem in the competitive bidding process.

KCUSD is a California public school district serving kindergarten through twelfth grades. KCUSD serves around 10,000 students but covers a very large area of approximately 600 square miles. The area is largely rural and agricultural. Technology infrastructure is not well developed in the area.

As described below KCUSD and Trillion Partners, Inc. ("Trillion") did not share any improper information that would give Trillion an advantage in bidding. Trillion did not have any information that other bidders lacked. KCUSD did not change its request for services, its request for proposals, or its bidding / contracting process in any way that would give Trillion an advantage. Furthermore, the standard by which SLD determined the receipt of "gifts, meals, gratuities, entertainment from the service provider, ... resulted in a competitive process that was no longer fair and open" without any specificity as to such gifts, meals, gratuities or entertainment, was arbitrarily and incorrectly applied.

We now respectfully request a review of the three pertinent and previously referenced SLD commitment adjustment decisions.

II. Discussion

A. Background on the relationship between KCUSD and Trillion

KCUSD had a long-standing contractual relationship with Trillion stemming from a Form 470 and a Request for Proposals (RFP) posted by KCUSD in December 2004, seeking a variety of services including a wireless WAN. KCUSD received the following bids in response to the request for wireless WAN services:

Trillion Partners	\$240,004 (35 and 100 Mbps)
Contera	\$392,580 (45 Mbps)
Contera	\$421,332 (100 Mbps)

All three bids met the minimum requirements for responsiveness, however, only Trillion's bid had a competitive price. KCUSD and Trillion signed a contract in February 2005, in a timely fashion to be the basis for its 2005 FRN citing Trillion.

In September 2006 KCUSD posted a new Form 470 (application number 792580000587057) asking for, among other things, additions to the existing wireless services, including increases in speed at one school and adding a new school site.

KCUSD received only one bid in response to this Form 470. The bid was from Trillion Partners, Inc. in the amount of \$317,568. As a result, Trillion and KCUSD restated and amended their existing contract. The amended contract was signed in February 2007.

B. There was a "fair and open" competitive process

SLD has been investigating whether meals and travel provided by Trillion are inconsistent with the fair and open competitive bidding process for a long time. Those questions were the basis for the denial of funding commitment requests for Funding Years 2008, 2009 and 2010. However SLD provided no specific evidence showing how payment of such expenses for employees unrelated to the vendor selection process had the effect of tainting the competitive bidding process. There was no evidence presented of

how the vendor selection process was unfairly influenced, nor how Trillion was supplied with “inside information” or allowed to compete unfairly in any way. We maintain that such evidence was not presented because it does not exist. The receipt of meals and travel expenses was lawful under state procurement and gift laws².

There is no evidence that these “gifts, meals, gratuities, entertainment” (hereafter “gifts”) created any “conflict of interest” or that the competitive bidding process was neither fair nor open. No timeframe was cited for these “gifts” and therefore, SLD failed to make its case showing the “conflict of interest.”

It is important to note that Trillion and KCUSD first signed a contract for services in February 2005 in response to KCUSD’s 2005-06 RFP related to wireless WAN services. Assuming that the “gifts” were those cited in the KCUSD Request for Review filed on November 10, 2011, then the trip to Austin, Texas was for the purpose of reviewing Trillion’s products and services and conducting due diligence on a potential vendor. Additionally, given the wide rural territory of KCUSD, it was important to have the opportunity to meet with other school district personnel (from other states, as well as California) to discuss technology and share experiences with different solutions. All other meals and travel took place after the initial contract was awarded to Trillion; they were part of a normal and ongoing business relationship and, while they may now be seen as exceeding the new standard adopted as part of the Sixth Report and Order³, it is presumptive and unproven to assume they created any undue influence as part of the competitive bidding process.

² It is noted that **only** state procurement and gift laws were applicable at the time these events took place. It is clear that SLD tried to impose federal standards, although as discussed herein, such standards were not adopted at the time such expenses were incurred.

³ FCC 10-175, issued on September 23, 2010.

In summary, KCUSD treated all bidders equally and did not favor them or improperly share information. Trillion and KCUSD maintained a normal business relationship. It is essential that school districts be allowed to have communications with their current vendors in order for the district to obtain the full benefit of the services being supplied. There was no improper pressure from Trillion or any inducements to contract with them. The fact that there was only one bidder cannot create a presumption of conflict of interest. There may be many factors limiting the number of bidders, such as the remoteness of the locations, the need to add to existing infrastructure, the economics of the situation, etc. Therefore, SLD has failed to establish credible evidence of a "conflict of interest" or a competitive bidding process that was not fair and open.

C. **The SLD did not apply the proper standard to determine whether there were any violations of gift rules**

The opening paragraph of the COMAD letters states "Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules." There is no citation of specific rules that might have been violated, nor is there any clarification of the standard by which a finding of "conflict of interest" was established. FCC regulations state that an applicant must submit bids that "have complied with all applicable state and local laws regarding procurement of services for which support is being sought." (47 C.F.R. § 54.504(c)(1)(vii).) The regulations and the SLD's web site guidance do not add additional parameters or legal restrictions. It appears that SLD is trying to impose the new standards established as a result of the Sixth Report and Order cited above. Further, it appears that SLD has created a new category of rule violation

where SLD can presumptively declare a “conflict of interest” without citing any evidence or offering any proof.

As stated in the December 15, 2010 clarifying Order (DA 10-2355) issued by the Wireline Competition Bureau, in section 16, Timing : “As stated in the *Sixth Report and Order*, the newly codified E-rate program gift rules take effect 30 days after publication of the order in the Federal Register.⁴ The *Sixth Report and Order*, including Appendix A, was published on December 3, 2010.” It is hard to imagine how these new, more stringent rules could have been applied to circumstances that took place in 2005 and 2006, since they were not even effective until March 3, 2011.

California law, like many state laws, specifies a different gift limit which is applicable to some but not all public officials. This distinction is necessary to ensure that those employees who have no role in selecting or evaluating vendors are not held to a more restrictive gift standard. During calendar years 2005 and 2006, specified public officials were limited to receiving gifts of \$360 per calendar from each source. During 2007 and 2008, the limit was \$390 per year, and for 2009 and 2010 it is \$420 per year.⁵ (See - California Code of Regulations, title 2, § 18940.2, as amended.)

Neither California law nor KCUSD policy contain any other parameters such as prohibiting gifts from a person contracting with a public agency. For example, the California Public Contracts Code governs public contracting. It states that school districts must procure technological products and services by using a competitive process where bids are solicited. Although both KCUSD and the state of California take ethics

⁴ *Sixth Report and Order* at para. 118.

⁵ See California Code of Regulations, title 2, § 18940.2, as amended, attached. We include several versions of section 18940.2, as the gift limit changes every two years to track changes in the inflation index.

seriously, the Public Contracts Code does not impose a ban on meals or travel provided by vendors or prospective vendors.⁶

KCUSD employees who attended conferences and meals were not subject to the gift limit described above. As described by the Fair Political Practices Commission:

If you are an employee of a local government agency who is designated in the agency's conflict-of-interest code, you may not accept gifts from any single source totaling more than \$420 in a calendar year if you are required to report receiving income or gifts from that source on your statement of economic interests. [citing Gov. Code, § 89503(c)] (Emphasis added.)⁷

KCUSD has adopted Board Bylaw 9270, its conflict of interest code. It specifies various officials that are “designated” employees who must file a “statement of economic interests.”⁸ None of the KCUSD employees that attended business meals were “designated” employees and none were subject to the gift limit. Therefore, there can be no finding that the state and local gift rules were violated.

D. **The rules in effect at the time of the alleged violation must be the rules applied to the circumstances.**

SLD seems to have taken the rule promulgated as part of the September 23, 2010 Sixth Report and Order⁹ and applied it **retroactively** to the circumstances of the instant case. This is an inappropriate action on its part and exceeds its authority. It is clear from the language of the Sixth Report and Order that the Federal Communications Commission intended only prospective application of the rules, as it mentions numerous times “the rules we adopt today” or “the rule we adopt herein.”

⁶ See California Public Contracts Code § 20118.2, attached.

⁷ See LIMITATIONS AND RESTRICTIONS ON GIFTS, HONORARIA, TRAVEL AND LOANS at p. 2 (California Fair Political Practices Commission, Feb. 2010).

⁸ Board Bylaw 9270 attached.

⁹ 47 CFR § 54.503, as amended by the Sixth Report and Order dated September 23, 2010.

SLD is guilty of overreaching in their zeal to pursue violations of the newly amended gift rule. SLD does not have the authority to promulgate rules; only the FCC can do that, and such official action was not taken until September 23, 2010. Thus the application of the newly amended standard to events which took place in 2005 and 2006 is arbitrary and capricious on the part of SLD and must be reversed.

III. Prayer for Relief

We respectfully seek review of SLD's Notification of Commitment Adjustment Letters and ask that the entire set of circumstances surrounding the posted Forms 470 and subsequent contracts be taken into consideration in deciding whether KCUSD, in fact, violated any FCC or state guidelines that were in effect at the time of such events or evinced any "conflict of interest" such that any contract should be invalidated.

In order to ensure that we ask that SLD be required to provide specific examples of such gifts, meals, gratuities or entertainment and show specific evidence supporting the determination that the receipt of such gifts, meals, gratuities, or entertainment resulted in "not a fair and open competitive process free from conflicts of interest."

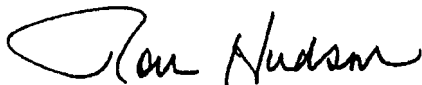
Alternative Waiver Request

In the alternative, if KCUSD is found to have violated the competitive bidding requirements by not having a fair and open process, we respectfully ask that such requirement be waived. Strict compliance with the rule would not further the purpose of 47 U.S.C. § 254(h), which directs the Federal Communications Commission to "enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries." To uphold the rescission of funding already received would inflict undue

hardship on the thousands of students served by the KCUSD District. Neither KCUSD nor its component schools has enough money set aside to cover this kind of repayment, and in these tight budget times, gathering such funds will be very difficult, if not impossible. If KCUSD is required to make repayment, it would have to divert funds that would otherwise be used in the classroom, thus having a direct negative impact on the education of the students within the District.

It defies logic to require the repayment of almost \$500,000 in potential E-rate funding¹⁰ over the receipt of \$1118.98 in meal and travel expenses. Therefore, we would ask that the requirement be waived and the commitments on the Form 471 applications for each of Funding Years 2005, 2006 and 2007 be allowed to stand, in accordance with the arguments raised herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ron Hudson". The signature is fluid and cursive, with a large initial "R" and "H".

Ron Hudson
Deputy Superintendent

¹⁰ The totals for the affected FRNs are \$39,759.90 (FY 2005); \$204,000.00 (FY 2006) and \$235,210.35 (FY 2007). All together, SLD is seeking repayment of \$478,970.25.

Received & Inspected

MAR 25 2011

FCC Mail Room

California Code of Regulations, title 2, § 18940.2

2 CA ADC § 18940.2

§ 18940.2. Gift Limit Amount.

Term 
2 CCR § 18940.2

Cal. Admin. Code tit. 2, § 18940.2

Barclays Official California Code of Regulations Currentness

Title 2. Administration

Division 6. Fair Political Practices Commission

 Chapter 9.5. Ethics (Refs & Annos)

➔ **§ 18940.2. Gift Limit Amount.**

(a) For purposes of Government Code section 89503, the adjusted annual gift limitation amount in effect for the period January 1, 2009, to December 31, 2010, is \$420.

(b) The gift limitation of \$250 in Government Code section 89503 shall be adjusted biennially by the Commission to reflect changes in the Consumer Price Index and rounded to the nearest ten dollars (\$10). The resulting figure shall be the adjusted gift limitation in effect until January 1 of the next odd-numbered year.

(c) The adjustment shall be based upon the September forecast of U.S. Bureau of Labor Statistics California Consumer Price Index for All Urban Consumers for the calendar year immediately preceding the year in which the adjustment is to take effect.

(d) The adjusted gift limitation amount shall be calculated by the Commission as follows:

(1) The base dollar amount of \$250 shall be increased or decreased by the cumulative percentage change in the annual average California Consumer Price Index from 1990 to the end of the calendar year immediately preceding the year in which the adjustment will take effect.

(2) The dollar amount obtained by application of the calculation set forth in subdivision (b) shall be rounded to the nearest ten dollars (\$10).¹

¹ For example, the California Consumer Price Index for All Urban Consumers for 1990 is 135.0. In 1992, the California CPI increased to 145.6. Therefore, the adjusted gift limitation amount beginning in 1993 would be calculated as follows:


 [Click to View]

Image 1 (4.61" X .34") Available for Offline Print

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 89503 and 89506, Government Code.

HISTORY

1. Renumbering of former section 18954 to new section 18940.2, amendment of section heading, new subsection (a), subsection relettering, repealer of former subsection (c), and amendment of footnote filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
2. Amendment of subsections (a) and (b) and Note filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
3. Amendment filed 12-10-98; operative 12-10-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 50).
4. Amendment of subsection (a) and amendment of Note filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).
5. Amendment of subsection (a) filed 1-16-2003; operative 1-1-2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).
6. Editorial correction of History 5 (Register 2003, No. 12).
7. Amendment of subsection (a) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).
8. Amendment of subsection (a) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).
9. Amendment of subsection (a) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).
10. Repealer and new subsection (c) filed 7-6-2009; operative 8-5-2009. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2009, No. 28).

2 CCR § 18940.2, ← 2 CA ADG § 18940 →. ← 2 →

This database is current through 10/29/10 Register 2010, No. 44

END OF DOCUMENT

**LIMITATIONS AND RESTRICTIONS ON GIFTS,
HONORARIA, TRAVEL AND LOANS at p. 2 (California
Fair Political Practices Commission, Feb. 2010).**

Limitations and Restrictions on Gifts, Honoraria, Travel and Loans

A Fact Sheet For

- Local Elected Officers and Candidates for Local Elective Offices
- Local Officials Specified in Government Code Section 87200
- Judicial Candidates
- Designated Employees of Local Government Agencies

California Fair Political
Practices Commission

Toll-free advice line: 1 (866) ASK-FPPC
Website: www.fppc.ca.gov

February 2010

Introduction

The Political Reform Act¹ (the "Act") imposes limits on gifts, prohibits honoraria payments, and imposes limits and other restrictions on the receipt of travel payments received by:

- Local elected officers and other local officials specified in Government Code Section 87200,² excluding judges;³
- Designated employees of local government agencies (i.e., individuals required to file statements of economic interests under a local agency's conflict-of-interest code); and
- Candidates⁴ for any of these offices or positions and judicial candidates. (Sections 89502 and 89503.)

The Act also imposes limits and other restrictions on personal loans received by certain local officials.

This fact sheet summarizes the major provisions of the Act concerning gifts, honoraria, travel, and loans. You should not, however, rely on the fact sheet alone to ensure compliance with the Act. If you have any questions, contact the Fair Political Practices Commission at (866) ASK-FPPC or visit our website at www.fppc.ca.gov. Commission advice letters

are available on our website. You may also be subject to local restrictions on gifts, honoraria, or travel.

Ethics Training

Most local agency officials are required to complete an ethics training course. Contact your agency for course information. Also see the FPPC website for a link to local agency ethics training.

Enforcement

Failure to report gifts, honoraria, loans, and travel payments may result in monetary penalties of up to \$5,000 per violation. (Section 83116.)

¹ Government Code Sections 81000-91014. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq.

² Local officials specified in Government Code Section 87200 include: members of boards of supervisors and city councils, mayors, city/county planning commissioners, city/county chief administrative officers, city/county treasurers, district attorneys, county counsels, city managers, city attorneys, court commissioners and public officials who manage public investments.

³ The gift limits and honoraria ban in the Political Reform Act do not apply to a person in his or her capacity as judge. However, candidates for judicial offices are subject to the restrictions contained in the Political Reform Act. (Sections 89502 and 89503.)

⁴ For purposes of the gift limit and honoraria prohibition, you become a "candidate" when you file a statement of organization (Form 410) as a controlled committee for the purpose of seeking elective office, a candidate intention statement (Form 501), or a declaration of candidacy, whichever occurs first. If you are an unsuccessful candidate, you will no longer be subject to the gift limit and honoraria prohibition when you have terminated your campaign filing obligations, or after certification of election results, whichever is earlier. (Sections 89502(b) and 89503(b).)

Gifts

Limitations

If you are a local elected officer, a candidate for local elective office, a local official specified in Government Code Section 87200, or a judicial candidate, you may not accept gifts from any single source totaling more than \$420 in a calendar year. (Section 89503.)⁵

If you are an employee of a local government agency who is designated in the agency's conflict-of-interest code, you may not accept gifts from any single source totaling more than \$420 in a calendar year if you are required to report receiving income or gifts from that source on your statement of economic interests. (Section 89503(c).)

What is a "Gift"?

A "gift" is any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public. (Section 82028.) (See FPPC Regulation 18946 for valuation guidelines.)

Except as discussed below, you have "received" or "accepted" a gift when you know that you have actual possession of the gift or when you take any action exercising direction or control over the gift, including discarding the gift or turning it over to another person. (Regulation 18941.)

In some cases, a gift to an official's family member* is considered a gift to the official. (See Regulation 18944, effective February 10, 2009.) This rule prevents donors from exceeding the limits on gifts to an official by giving gifts to the official's family members instead. Under the rule, when a donor gives a single gift, such as a painting for the home, to an official and family member, it is a gift to the official in its full amount. (Wedding gifts are treated specially - see Page 5.)

Local Officials Holding Positions Listed in Government Code Section 87200. If the family member of a local official holding a position listed in Government Code Section 87200 receives a gift from a donor involved in a governmental decision the local official is participating in, the following rules apply: (1) There is a gift to the official for its full value if the official will receive a financial benefit from the gift (defined as including something that a family would normally pay for in providing care and support to a family member), uses the gift (other than minimal use), or controls the gift (such as asking for tickets for the family member); and (2) There is a gift to the official for its full value even if the official will not receive a financial benefit from, or use or control the gift, unless the official can show the donor has an established working, social, or similar relationship with the official's family member independent of the donor's relationship with the official. (See Page 1 for a list of Section 87200 positions.)

⁵ The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. For 2009-2010, the gift limit is \$420. (Section 89503; Regulation 18940.2.) Gifts aggregating \$50 or more must be disclosed and gifts aggregating \$420 or more may subject you to disqualification with respect to the source. (Section 87103(e).) Designated employees should consult the "disclosure category" portion of their agency's conflict-of-interest code to determine if a particular source of income or gifts must be disclosed. Some conflict-of-interest codes require very limited disclosure of income and gifts. If your agency's conflict-of-interest code requires you to disclose income and gifts only from specified sources, gifts from sources which are not required to be disclosed are not subject to the \$420 gift limit.

Designated Employees, Members of Most Local Boards. If the family member of a local official not holding a position listed in Government Code Section 87200 receives a gift from any person, it is a gift to the official if the official will receive a financial benefit from the gift (defined as including something that a family would normally pay for in providing care and support to a family member), uses the gift (other than minimal use), or controls the gift (such as asking for tickets for the family member) and the official cannot show that the donor has an established working, social, or similar relationship with the official's family member independent of the donor's relationship with the official.

* For purposes of this rule, an official's "family member" includes: the official's spouse; registered domestic partner; any minor child of the official who the official can claim as a dependent for federal tax purposes; and a child of the official who is aged 18 to 23 years of age, attends school, resides with the official when not attending school, and provides less than one-half of his or her own support.

Exceptions

The Act and Commission regulations provide exceptions for certain types of gifts. (Section 82028; Regulations 18940-18946.5.) **The following are not subject to any gift limit and are not required to be disclosed on a statement of economic interests (Form 700):**

1. Gifts which you return (unused) to the donor, or for which you reimburse the donor, within 30 days of receipt. (Section 82028(b)(2); Regulation 18943.)

2. Gifts which you donate (unused) to a non-profit, tax-exempt (501(c)(3)) organization or a government agency within 30 days of receipt without claiming a deduction for tax purposes. (Section 82028(b)(2); Regulation 18943.)

3. Gifts from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift. (Section 82028(b)(3); Regulation 18942(a)(3).)

4. Gifts of hospitality including food, drink or occasional lodging that you receive in an individual's home when the individual or a member of his or her family is present. (Regulation 18942(a)(7).)

5. Gifts approximately equal in value exchanged between you and another individual on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value. (Regulation 18942(a)(8).)

6. Informational material provided to assist you in the performance of your official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.

"Informational material" may also include scale models, pictorial representations, maps, and other such items, provided that if the item's fair market value is more than \$420, you have the burden of demonstrating that the item is informational. In addition, on-site demonstrations, tours, or inspections designed specifically for public officials are considered informational material, but this exception does not apply to meals or to transportation to the site unless the transportation is not commercially available. (Section 82028(b)(1); Regulations 18942(a)(1) and 18942.1.)

7. A devise or inheritance. (Section 82028(b)(5); Regulation 18942(a)(5).)

8. Campaign contributions, including rebates or discounts received in connection with campaign activities. (Section 82028(b)(4);

Gifts

Regulation 18942(a)(4).) However, campaign contributions must be reported in accordance with the campaign disclosure provisions of the Act and may be subject to other limitations imposed by the Act.

9. Personalized plaques and trophies with an individual value of less than \$250. (Section 82028(b)(6); Regulation 18942(a)(6).)

10. A single ticket or other admission privilege, for your own use, to attend a fundraiser for a campaign committee or candidate, or to a fundraiser for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The ticket may only be received from the organization or committee holding the fundraiser. The nondeductible value of a ticket to a 501(c)(3) fundraiser may not exceed the gift limit. (Regulation 18946.4.)

11. Passes or tickets that provide admission or access to facilities, goods, services, or other benefits (either on a one-time or repeated basis) that you do not use and do not give to another person. (Regulation 18946.1.)

12. Gifts provided to your government agency. This may include passes or tickets to facilities, goods, or services, travel payments, and other benefits. However, this exception does not apply to elected officials and officials specified in Government Code Section 87200 (see page 1) with regard to travel payments. In addition, certain conditions must be met before a gift received by an official through his or her agency would not be considered a gift to the official. An agency must disclose specified payments on its website. (Regulations 18944.1-18944.3.) Contact the FPPC for detailed information.

13. Generally, payments made by a third party to co-sponsor an event, or that is principally legislative, governmental or charitable in nature. (See Page 5.)

14. Leave credits (e.g., sick leave or vacation credits) received under a bona fide catastrophic

or emergency leave program established by your employer and available to all employees in the same job classification or position. Donations of cash are gifts and are subject to limits and disclosure. (Regulation 18942(a)(9).)

15. Food, shelter, or similar assistance received in connection with a disaster relief program. The benefits must be received from a governmental agency or charity (501(c)(3)) and must be available to the general public. (Regulation 18942(a)(10).)

16. Items awarded in an employee raffle, received by the agency from an agency employee who is not acting as an intermediary for another donor. This exception applies when an agency holds an employee raffle and the item awarded in the raffle has been obtained with agency funds, or is otherwise an asset of the agency and not donated to the agency by a non-agency source. This exception does not apply to passes or tickets of the type described in Regulation 18944.1. (Regulation 18944.4.(a) and (b).)

17. Items received by an employee during an employee gift exchange, so long as the item received is provided by another employee of the agency and the gifts are not substantially disproportionate in value. (Regulation 18944.4(c).)

Gifts Reported by the Official's Agency
The following exceptions are also applicable to gifts, but the official's agency may be required to report these items on a Form 801 or Form 802 instead of the official reporting the items on a statement of economic interests (Form 700).

Form 801: For an item to be considered a gift to the official's agency instead of a gift to the official, the payment (or item) must provide a personal benefit to a public official, such as a travel payment; and, in order for an agency to convert the payment into an agency gift, the payment may only be used for official

agency business and the agency must control the payment. If the payment meets these requirements, the agency must report it on a Form 801 and the item is not reported on the individual's statement of economic interests (Form 700). (Regulation 18944.2.)

Form 802: When an official's agency provides an entertainment or sporting ticket or pass to a public official in order for it not to be reported on the individual's statement of economic interests (Form 700), the agency must have a written policy stating the public purpose for distribution of the tickets prominently posted on the agency website. The ticket or pass cannot be earmarked by the original source for use by a particular agency official, the agency must determine, in its sole discretion, which official may use the ticket or pass. The official's name will be identified on the agency's website on the Form 802 along with the source of the ticket. (Regulation 18944.1.)

Behested Payments

The following payments are not considered gifts, but the official may be required to report these items on a Form 803.

Form 803: Behested payments are payments made principally for legislative, governmental, or charitable purposes. These payments are not for personal or campaign purposes. For example, an elected official may ask a third party to contribute funds to a school in his or her district, or to a job fair or health fair. Generally, a donation will be made "at the behest" if it is requested, solicited, or suggested by the elected officer, or otherwise made to a person in cooperation, consultation, coordination with, or at the consent of, the elected officer. This includes payments behested on behalf of the official by his or her agent or employee.

Behested payments totaling \$5,000 or more from a single source in a calendar year must be disclosed by the official on a Form 803, which is filed with the official's agency within 30 days of the date of the payment(s). (Section 82015.)

Reportable Gifts Not Subject to Limits

The following exceptions are also applicable to gifts, but you may be required to report these items on a statement of economic interests (Form 700) and they can subject you to disqualification:⁶

1. Certain payments for transportation, lodging, and subsistence are not subject to gift limits but may be reportable. Travel payments are discussed below. See Regulation 18946.6 to determine the value of gifts of air transportation.

2. Wedding gifts are not subject to the gift limit but are reportable. For purposes of valuing wedding gifts, one-half of the value of each gift is attributable to each spouse, unless the gift is intended exclusively for the use and enjoyment of one spouse, in which case the entire value of the gift is attributable to that individual. (Regulation 18946.3.)

3. A prize or award received in a bona fide competition not related to your official status is not subject to the gift limit, but must be reported as income. Therefore, it is reportable if the value of the prize or award is \$500 or more. (Section 87207; Regulation 18946.5.)

⁶ Designated employees should consult the "disclosure category" portion of their agency's conflict-of-interest code to determine if a particular source of income or gifts must be disclosed.

Honoraria

The Prohibition

If you are a local elected officer, a candidate for local elective office, a local official specified in Government Code Section 87200, or a judicial candidate, you may not accept honoraria payments. (Section 89502.)

If you are an employee of a local government agency who is designated in the agency's conflict-of-interest code, you may not accept honoraria payments from any source if you are required to report receiving income or gifts from that source on your statement of economic interests. (Section 89502(c).)

What is an "Honorarium"?

An "honorarium" is any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89501.)

A "speech given" means a public address, oration, or other form of oral presentation, including participation in a panel, seminar, or debate. (Regulation 18931.1.)

An "article published" means a nonfictional written work: 1) that is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and 2) that is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication. (Regulation 18931.2.)

"Attendance" means being present during, making an appearance at, or serving as host or master of ceremonies for any public or private conference, convention, meeting, social event, meal, or like gathering. (Regulation 18931.3.)

Exceptions

The Act and Commission regulations provide certain exceptions to the prohibition on honoraria. (Section 89501; Regulations 18930-

18933.) The payments described below are not prohibited and are not required to be disclosed on a statement of economic interests (Form 700):

1. An honorarium that you return (unused) to the donor or the donor's agent or intermediary within 30 days. (Section 89501(b); Regulation 18933.)

2. An honorarium that is delivered to your government agency within 30 days for donation to the agency's general fund or equivalent account for which you do not claim a deduction for income tax purposes. (Section 89501(b); Regulation 18933.)

3. A payment that is not delivered to you but is made directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt, non-profit organization. However:

- You may not make the donation a condition for your speech, article, or attendance;
- You may not claim the donation as a deduction for income tax purposes;
- You may not be identified to the non-profit organization in connection with the donation; and
- The donation may have no reasonably foreseeable financial effect on you or on any member of your immediate family. (Regulation 18932.5.)

4. A payment received from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person. However, a payment which would be considered an honorarium is prohibited if one of these persons is acting as an agent or intermediary for someone else. (Regulation 18932.4(b).)

5. Items 6, 8, and 9 under "Exceptions to the Definition of 'Gift'" discussed earlier in this fact sheet. (Regulation 18932.4.)

Exceptions That May Be Reportable As Income or Gifts

The following payments are not considered "honoraria" but may be reportable and can subject you to disqualification:⁷

1. Payments received for a comedic, dramatic, musical, or other similar artistic performance, and payments received for the publication of books, plays, or screenplays. (Regulations 18931.1-18931.2.) However, such payments are reportable income.

2. Income earned for your personal services if the services are provided in connection with a bona fide business, trade, or profession – such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting – and the services are customarily provided in connection with the business, trade, or profession.

This exception does not apply if the sole or predominant activity of the business, trade, or profession is making speeches. In addition, you must meet certain criteria to establish that you are practicing a bona fide business, trade, or profession (such as maintenance of business records, licensure, proof of teaching position) before a payment received for personal services which may meet the definition of honorarium would be considered earned income and not an honorarium. (Section 89501(b); Regulations 18932-18932.3.) Earned income is required to be reported. Contact the FPPC for detailed information.

3. Certain payments for transportation, lodging, and subsistence are not considered honoraria but may be reportable and subject to the gift limit. (Sections 89501(c) and 89506.)

⁷ Designated employees should consult the "disclosure category" portion of their agency's conflict-of-interest code to determine if a particular source of income or gifts must be disclosed

Travel Payments

The Act and Commission regulations provide exceptions to the gift limit and honoraria prohibition for certain types of travel payments. (Section 89506; Regulations 18950-18950.4.)

The term "travel payment" includes payments, advances, or reimbursements for travel, including actual transportation, parking and related lodging and subsistence. (Section 89506(a).)

Exceptions

The following types of travel payments are not subject to any limit and are not reportable on a statement of economic interests (Form 700):

1. Free admission to an event at which you make a speech, participate on a panel, or make a substantive formal presentation, transportation, and necessary lodging, food, or beverages⁸, and nominal non-cash benefits provided to you in connection with the event so long as:

- a. The speech is for official agency business and the official is representing his or her government agency in the course and scope of his or her official duties; and
- b. The payment is a lawful expenditure made only by a federal, state, or local government agency for purposes related to conducting that agency's official business.

The exception does not apply to state or local elected officers and officials specified in Section 87200. (Regulation 18950.3(b), effective March/April 2010).

2. Travel payments provided to you by your government agency or by any state, local, or federal government agency which would

be considered income and not a gift (i.e., payments for which you provide equal or greater consideration). (Section 89506(d)(2); Regulation 18950.1(d).)

3. Reimbursements for travel expenses provided to you by a bona fide non-profit, tax-exempt (501(c)(3)) entity for which you provide equal or greater consideration. (Section 82030(b)(2).)

4. Travel payments provided to you directly in connection with campaign activities. However, these payments must be reported in accordance with the campaign disclosure provisions of the Act. (Regulations 18950.1(c); 18950.4.)

5. Any payment for travel that is excluded from the definition of "gift" as described earlier in this fact sheet.

Reportable Payments Not Subject to Limit

The following travel payments are not subject to the gift limit but may be reportable on a statement of economic interests (Form 700):

1. Travel that is reasonably necessary in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code. (Section 89506(d)(3); Regulation 18950.1(e).) For reporting purposes, these travel payments would be considered part of the salary, wages, and other income received from the business entity and would be reported on Schedule A-2 or C of Form 700.

2. Travel within the United States that is reasonably related to a legislative or

⁸ Lodging, food, or beverages are "necessary" only when provided on the day immediately preceding, the day(s) of, and the day immediately following the speech, panel, seminar, or similar service.

governmental purpose – or to an issue of state, national, or international public policy – in connection with an event at which you give a speech, participate in a panel or seminar or provide a similar service. Lodging and subsistence expenses in this case are limited to the day immediately preceding, the day of, and the day immediately following the speech, panel, or other similar service. (Section 89506(a)(1); Regulation 18950.1(a)(2).

Note that this exception is different than travel payments described earlier. Under the circumstances described in this paragraph, transportation within the United States is not subject to the gift limit but is reportable and can subject a public official to disqualification.

As discussed earlier, most local government employees are not required to report travel payments paid by a governmental agency in the course of employment. (Regulation 18950.3, effective March/April 2010.)

3. Travel not in connection with giving a speech, participating in a panel, or seminar or providing a similar service but which is reasonably related to a legislative or governmental purpose – or to an issue of state, national, or international public policy – and which is provided by:

- A government, governmental agency, foreign government, or government authority;
- A bona fide public or private educational institution defined in Section 203 of the California Revenue and Taxation Code;
- A non-profit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; or
- A foreign organization that substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(Section 89506(a)(2); Regulation 18950.1(b).)

Loans

Personal loans received by elected and appointed officials are subject to limits and other restrictions and, in some circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it.

Limitations on Loans from Agency Officials, Consultants, and Contractors

If you are an elected official or an official specified in Section 87200 (see footnote 2 on page 1), you may not receive a personal loan that exceeds \$250 at any given time from an officer, employee, member, or consultant of your government agency or an agency over which your agency exercises direction and control. (Section 87460(a) and (b).)

In addition, you may not receive a personal loan that exceeds \$250 at any given time from any individual or entity that has a contract with your government agency or an agency over which your agency exercises direction and control. This limitation does not apply to loans received from banks or other financial institutions, and retail or credit card transactions, made in the normal course of business on terms available to members of the public without regard to official status. (Section 87460(c) and (d).)

Loan Terms Applicable Only to Elected Officials

In addition to the limitations above, if you are an elected official, you may not receive a personal loan of \$500 or more unless the loan is made in writing and clearly states the terms of the loan. The loan document must include the names of the parties to the loan agreement, as well as the date, amount, interest rate, and term of the loan. The loan document must also include the date or dates when payments are due and the amount of the payments. (Section 87461.)

The following loans are not subject to these limits and documentation requirements:

1. Loans received by an elected officer's or candidate's campaign committee.
2. Loans received from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person unless he or she is acting as an agent or intermediary for another person not covered by this exemption.
3. Loans made, or offered in writing, prior to January 1, 1998. (Sections 87460 and 87461.)

Loans as Gifts

Under the following circumstances, a personal loan received by any public official (elected and other officials specified in Section 87200, as well as any other local government official or employee required to file statements of economic interests) may become a gift and subject to gift reporting and limitations:

1. If the loan has a defined date or dates for repayment and has not been repaid, the loan will become a gift when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, the loan will become a gift if it remains unpaid when one year has elapsed from the later of:
 - The date the loan was made;
 - The date the last payment of \$100 or more was made on the loan; or
 - The date upon which the official has made payments aggregating to less than \$250 during the previous 12 months. (Section 87462.)